

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BRENT NICHOLSON, an individual; et al.,

Plaintiffs,

v.

THRIFTY PAYLESS, INC., a California  
corporation; and RITE AID CORPORATION, a  
Delaware corporation,

Defendants.

NO. 2:12-cv-01121-RSL

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things  
3 produced or otherwise exchanged: (1) personal information of an employee or third party, (2)  
4 proprietary information which constitutes a trade secret or is otherwise confidential under  
5 applicable law, (3) files produced in native format by the parties and the corresponding metadata  
6 therein,<sup>1</sup> (4) information subject to a confidentiality agreement with a third party, or (5)  
7 information that might violate a third party's right to privacy, and is designated by any producing  
8 party to be confidential. Such confidential materials may include specifically, but not  
9 exclusively, financial data, written discovery, deposition testimony, documents, data, or other  
10 information furnished during the course of this action.

11 3. SCOPE

12 The protections conferred by this agreement cover not only confidential material (as  
13 defined above), but also (1) any information copied or extracted from confidential material; (2)  
14 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
15 conversations, or presentations by parties or their counsel that might reveal confidential material.  
16 However, the protections conferred by this agreement do not cover information that is in the  
17 public domain or becomes part of the public domain through trial or otherwise.

18 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

19 4.1 Basic Principles. A receiving party may use material that is disclosed or produced  
20 by another party or by a non-party in connection with this case only for prosecuting, defending,  
21 or attempting to settle this litigation. Confidential material may be disclosed only to the  
22 categories of persons and under the conditions described in this agreement. Confidential material  
23

24  
25 <sup>1</sup> To expedite discovery the parties have agreed to produce electronic files in native format. Such files will have a  
26 corresponding bates stamped image (tif., pdf., etc.) which will only be designated Confidential as otherwise  
described in this order.

1 must be stored and maintained by a receiving party at a location and in a secure manner that  
2 ensures that access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
4 ordered by the court or permitted in writing by the designating party, a receiving party may  
5 disclose any confidential material only to:

6 (a) the receiving party's counsel of record in this action, as well as employees of  
7 counsel to whom it is reasonably necessary to disclose the information for this litigation;

8 (b) the officers, directors, and employees (including in house counsel) of the  
9 receiving party to whom disclosure is reasonably necessary for this litigation, unless the  
10 parties agree that a particular document or material produced is for Attorney's Eyes Only  
11 and is so designated;

12 (c) experts and consultants to whom disclosure is reasonably necessary for this  
13 litigation and who have signed the "Acknowledgment and Agreement to Be Bound"  
14 (Exhibit A);

15 (d) the court, court personnel, and court reporters and their staff;

16 (e) copy or imaging services retained by counsel to assist in the duplication of  
17 confidential material, provided that counsel for the party retaining the copy or imaging  
18 service instructs the service not to disclose any confidential material to third parties and  
19 to immediately return all originals and copies of any confidential material;

20 (f) during their depositions, witnesses in the action to whom disclosure is  
21 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be  
22 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the  
23 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
24 confidential material must be separately bound by the court reporter and may not be  
25 disclosed to anyone except as permitted under this agreement;  
26

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

## 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or

1 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
2 be clearly so designated before or when the material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic documents and  
4 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
5 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page  
6 that contains confidential material. If only a portion or portions of the material on a page  
7 qualifies for protection, the producing party also must clearly identify the protected  
8 portion(s) (e.g., by making appropriate markings in the margins).

9 (b) Testimony given in deposition or in other pretrial or trial proceedings: the  
10 parties must identify on the record, during the deposition, hearing, or other proceeding,  
11 all protected testimony, without prejudice to their right to so designate other testimony  
12 after reviewing the transcript. Any party or non-party may, within fifteen days after  
13 receiving a deposition transcript, designate portions of the transcript, or exhibits thereto,  
14 as confidential.

15 (c) Other tangible items: the producing party must affix in a prominent place on  
16 the exterior of the container or containers in which the information or item is stored the  
17 word "CONFIDENTIAL." If only a portion or portions of the information or item  
18 warrant protection, the producing party, to the extent practicable, shall identify the  
19 protected portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
21 designate qualified information or items does not, standing alone, waive the designating party's  
22 right to secure protection under this agreement for such material. Upon timely correction of a  
23 designation, the receiving party must make reasonable efforts to ensure that the material is  
24 treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any party who wishes to challenge another party's designation of information as "Confidential" may proceed at any time as follows:

(a) The objecting party will notify the proponent of the confidentiality of the document in writing of the objection, the basis therefore, and shall identify by category or document number the information as to which relief is sought;

(b) If the designating party disagrees with the objection, counsel for such parties shall confer in a good faith effort to resolve by agreement any differences as to the use or designation of information as "Confidential" information;

(c) If the issue cannot be resolved the designating party may file a Motion with the Court seeking an order approving the "Confidential" designation pursuant to section 6.3, below. If no such motion is filed within 7 days after the parties have conferred, the documents shall cease to be deemed Confidential; and

(d) The designation of confidentiality shall remain in full force and effect and the information shall continue to be accorded the treatment required by this Order, until the motion with respect to the particular designation of confidentiality is ruled upon by the Court.

Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

#### 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
3 material to any person or in any circumstance not authorized under this agreement, the receiving  
4 party must immediately (a) notify in writing the designating party of the unauthorized  
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
6 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
7 this agreement, and (d) request that such person or persons execute the “Acknowledgment and  
8 Agreement to Be Bound” that is attached hereto as Exhibit A.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
10 MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently  
12 produced material is subject to a claim of privilege or other protection, the obligations of the  
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
14 provision is not intended to modify whatever procedure may be established in an e-discovery  
15 order or agreement that provides for production without prior privilege review. Parties shall  
16 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

17 10. NON TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each receiving  
19 party must return all confidential material to the producing party, including all copies, extracts  
20 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
21 destruction.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
25 work product, even if such materials contain confidential material.  
26

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED this 15<sup>th</sup> day of March, 2013.

**GORDON TILDEN THOMAS & CORDELL LLP**  
Attorneys for Plaintiffs

By s/ Michael Rosenberger

Jeffrey M. Thomas, WSBA #21175  
Michael Rosenberger, WSBA #17730  
1001 Fourth Avenue, Suite 4000  
Seattle, Washington 98154  
Telephone: (206) 467-6477  
Email: jthomas@gordontilden.com  
Email: mrosenberger@gordontilden.com

DATED this 15<sup>th</sup> day of March, 2013.

**ROHDE & VAN KAMPEN PLLC**  
Attorneys for Defendants

By s/ David Crowe

Delbert D. Miller, WSBA #1154  
Al Van Kampen, WSBA #13670  
David E. Crowe, WSBA #43529  
1001 Fourth Avenue, Suite 4050  
Seattle, Washington 98154  
Telephone: (206) 903-8082  
Email: dmiller@rvk-law.com  
Email: avk@rvk-law.com  
Email: dcrowe@rvk-law.com

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated this 19<sup>th</sup> day of March, 2013.

Robert S. Lasnik

Robert S. Lasnik  
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Brent Nicholson, et. al. v. Thrifty Payless, Inc. and Rite Aid Corporation*, United States District Court Western District of Washington Cause No. 2:12-cv-01121-RSL. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_